

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

CLIFFORD RAUM) CASE NO. 1:10CV2072
)
Plaintiff,)
) JUDGE PATRICIA A. GAUGHAN
v.)
)
CUYAHOGA COUNTY COMMON) <u>MEMORANDUM OF OPINION</u>
PLEAS COURT) <u>AND ORDER</u>
)
Defendant.)

Plaintiff *pro se* Clifford Raum filed this action under the Civil Rights Act of 1871, 42 U.S.C. § 1983, against the Cuyahoga County Common Pleas Court. Also, before the Court is Plaintiff's Motion for Appointment of Counsel (ECF 3). He alleges that while awaiting trial on criminal charges, he was deprived of his right to a preliminary hearing and was not present at a pretrial. Plaintiff requests damages in the amount of \$500,000.00.

A district court is expressly authorized to dismiss any civil action filed by a prisoner seeking relief from a governmental entity, as soon as possible after docketing, if the court concludes that the complaint fails to state a claim upon which relief may be granted, or if the plaintiff seeks monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A; *Siller v. Dean*, 2000 WL 145167 * 2 (6th Cir. Feb. 1, 2000); *see Hagans v. Lavine*, 415 U.S. 528, 536-37 (1974) (citing numerous Supreme Court cases for the proposition that attenuated or unsubstantial claims divest the district court of jurisdiction); *In re Bendectin Litig.*, 857 F.2d 290, 300 (6th Cir. 1988) (recognizing that federal question jurisdiction is divested by unsubstantial claims).

The Cuyahoga County Common Pleas Court is an instrumentality of the State of Ohio. *Johnson v. Belskis*, 2005 WL 2416557 * 7 (S.D. Ohio, Sep. 30, 2005). The Eleventh Amendment

to the United States Constitution prohibits a citizen of a state from suing that state, or one of its agencies, in federal court unless the state consents to such suit or there is an express statutory waiver of immunity. *Hans v. Louisiana*, 134 U.S. 1(1890); *Jacobs v. Ohio Dept. of Rehabilitation and Correction*, 2009 WL 3126285 * 3 (S.D. Ohio, Sep.23, 2009) (citing *Pennhurst State School & Hosp. v. Halderman*, 465 U.S. 89, 98-99(1984)). The State of Ohio has not consented to suit in federal court. *Jacobs*, 2009 WL 3126285 at * 3.

Moreover, the Cuyahoga County Common Pleas Court Docket shows that, on October 14, 2010, Plaintiff was acquitted of all charges against him. *State of Ohio v. Raum*, Case No. CR-10-540323. He has not been harmed by the absence of a preliminary hearing or by not being present at a pretrial conference. Thus, he has not shown that he would be entitled to any damages.

Accordingly, Plaintiff's Motion for Appointment of Counsel is denied. This action is dismissed pursuant to 28 U.S.C. § 1915A. The Court certifies, pursuant to 28 U.S.C. § 1915(a)(3) that an appeal from this decision could not be taken in good faith.

IT IS SO ORDERED.

Date: 11/5/10

/s/ Patricia A. Gaughan
JUDGE PATRICIA A. GAUGHAN
UNITED STATES DISTRICT JUDGE